IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2744 OF 2007

IN

SUIT NO. 345 OF 1992

ALONGWITH

NOTICE OF MOTION NO. 2752 OF 2007

IN

SUIT NO. 2348 OF 1990

M/s Ardeshir B. Cursetjee & Sons Ltd. .... Plaintiffs

Vs.

M/s Mackinnon Mackenzie & Co. Ltd. & Ors. .... Defendents

Mr. R.A. Shaikh a/w Mr. M.M. Gohar for the Plaintiffs

Mr. R.A. Kapadia, senior Advocate a/w Mr. C.S. Balsara i/b Desai & Diwanji.
Mr. I.M. Chagla, senior Advocate a/w R.I. Chagla and Ms. Rupali i/b Maneksha Sethna for defendant no. 1.

CORAM : A.M. KHANWILKAR, J.
DATE : 27TH AUGUST, 2007

P.C.

1) Heard learned counsel for the parties. By consent Notice of Motion is finally disposed of by this order. In this Notice of Motion, grievance is made that the consent decree passed on 10th

February 2006 in Suit No. 345 of 1992 as well as dated 3rd May 2006 in Suit No. 2348 of 1990 are obtained by playing fraud on the applicant-plaintiff in original Suit No. 3459 of 1989 filed before this Court and applicant in original Application no. 154 of 2001, as well as this Court.

2) However, during the arguments, the main grievance of the applicant, is that the order of attachment which was passed in the said suit filed by the applicant before this Court on 25th October 1991, being Suit No. 3459 of 1989 (which is now original Application No. 154 of 2001), has been wrongly set aside by the D.R.T. under it's order dated 25th January 2007 relying on the terms of the consent decree passed by this Court. In that, the order of attachment was passed in the suit filed by the applicant, coupled with the fact that the applicant is not party to the purported consent terms. It is, however, not in dispute that the order dated 25th January 2007 passed by the D.R.T. has already been challenged by the applicant before the Appellate Authority, being Appeal No.215 of 2007, which is still pending for consideration. Initially order of status-quo was passed by the Appellate Authority in relation to the two flats.

However, that status-quo order has now been vacated/ not extended as the applicant intended to move to this Court by way of present motion.

3) After hearing the learned counsel for the parties, I have no hesitation in taking the view that the question whether the order of attachment dated 25th October 1991 has been rightly set aside by the D.R.T., is an issue which will have to be considered in the pending appeal filed by the applicant, being Appeal No. 2154 of 2007. Indeed, that question may incidently arise for consideration in the present motion. However, counsel for the applicant fairly states that if the applicant succeeds in reversal of the decision of the D.R.T. referred to above; as a result thereof there will be revival of order of attachment and then the applicant will be able to take the matter to its logical end. In that case, contends learned counsel, it will not be necessary for the applicant to agitate the matter further in particular on the basis of the grounds set out in the present motion.

4) Learned counsel for the applicant, therefore, submitted that the applicant would be content even with the order of status-quo which was originally passed by the Appellate Authority in

relation to two flats, is continued for the time being. In which case, the present motion need not be proceeded further while leaving all questions raised therein open with liberty to the applicant to take recourse to the same remedy as and when occasion arises.

5) In the circumstances, the present motion is disposed of with the following order :

O R D E R

(i) The Appellate authority may decide the question regarding the efficacy of the attachment order dated 25th October 1991 passed in Suit No. 3459 of 1989 and also whether the said order has been wrongly set aside by the D.R.T. on 25th January 2007, on its own merits, in accordance with law. All questions in that behalf are left open. Till the said Appeal is decided, the order of status-quo passed by the Appellate authority in relation to the two flats shall continue to operate or till the same is modified or varied by the Appellate Court on tangible grounds, as may be available.

(ii) The motion is disposed of on the above

terms with liberty to the applicant to take out appropriate proceedings in relation to the other grounds which will be considered on its own merits in the said proceedings.

(iii) It is clarified that I am not expressing any opinion on the correctness of the allegations of fraud made in the present motion. It will be open for the parties to contest the same, as and when the applicant takes recourse to the remedy in that behalf.

(iv) I am informed that appeal has been placed for hearing on 19th November 2007. Needless to observe that having regard to the nature of controversy, it will be appropriate, to dispose of the said appeal expeditiously.

(v) Motion disposed in the above terms.

(A.M. KHANWILKAR, J.)